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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WOLFGANG EIS and LOTHAR WILLMES

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Appeal 2008-2521  
Application 10/770,617  
Technology Center 1700

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Decided: December 8, 2008

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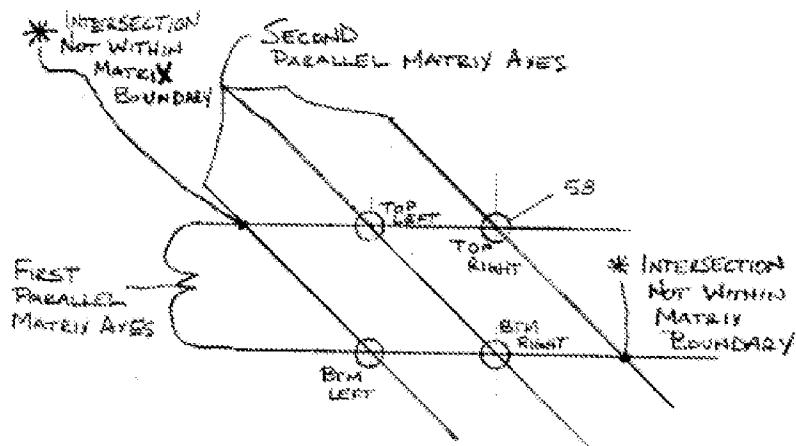
Before CHUNG K. PAK, CATHERINE Q. TIMM, and  
JEFFREY T. SMITH, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of our Decision of July 31, 2008 (hereinafter "Decision"), wherein we sustained the Examiner's rejection of appealed claims 1, 3 through 27 and 29 under 35 U.S.C. § 103(a). Appellants contend that we overlooked limitations required by claim 1. (Request 2-5). In this regard, Appellants state:

Below is a sketch illustrating the Board's position with respect to the Gouronne reference.



As seen from the above-provided sketch, the honorable Board's position does not account for the limitation of "each of said first matrix axes intersecting each of said second matrix axes within a boundary of said matrix configuration" [recited in claim 1].  
(Request 2-3)(emphasis in original)

Thus, Appellants argue that we overlooked limitations required by claim 1 because two crossing points of the first and second matrix axes, one at the far left and one at the far right, are not within a boundary of the matrix configuration. We do not agree.

We begin by noting that claim 1 requires, at a minimum, four heating bushes, one for each crossing point of two mutually parallel first matrix axes and two mutually parallel angular second matrix axes. As stated in page 8 of our decision, "the claimed axes can be defined by any series of locations of the heating bores as is apparent from Fig. 2 of the subject application."

These series of axes can be any axes connecting two heating bores horizontally and transversely. Also, the claim language "boundary" is not defined in the Specification as being relative to all of the heating bushes included in the rows and columns of heating bushes, including the 4x4 matrix, taught or suggested by Gouronnec. (See Claim 1, Figure 2, item 22

and Spec. in its entirety). The term “boundary” is used arbitrarily to define an area where at least four heating bushes are disposed in a parallelogram matrix configuration. (See Claim 1, Figure 2, item 22 and Spec. in its entirety). Further, the term "comprising" in claim 1 permits additional elements, including any number of unclaimed heating bores 58 (orifices) disposed outside of the crossing points of the first and second matrix axes, but within a boundary of a matrix configuration. *In re Baxter*, 656 F.2d 679, 686-87 (CCPA 1981) (“As long as one of the [claimed] monomers in the reaction is propylene, any other monomer may be present, because the term ‘comprise’ permits the inclusion of other [unrecited] steps, elements, or materials.”).

As indicated in page of 8 of our decision, Gouronnec's square matrix configuration having at least two rows and at least three columns of heating bores 58 (orifices) (including "4x4 matrix") include at least four or six heating bores 58 (orifices) arranged in a parallelogram matrix configuration which defines the claimed first and second matrix axes. At least four of the heating bores 58 (orifices) are disposed at the four crossing points of the first and second matrix axes which define a parallelogram matrix configuration. These heating bores 58 (orifices), which meet the four heating bush minimum required by claim 1, are within an arbitrary boundary of the matrix configuration as required by claim 1

To the extent that the Gouronnec alone would not have suggested arranging such heating bores 58 positioned in the claimed manner, the outcome of this case would not be altered.

As stated in our decision:

Jensen, like Gouronnec and Appellants, teaches an apparatus for producing optical glass fibers comprising heating orifices or tips, which are located in plate 13 (known as a "bushing") for heating multiple preforms as they are passed through, for example, the heating orifices (heating diffusers) to draw optical fibers. (Compare Spec. Fig. 2 and Gouronnec col. 4, l. 64 to col. 5, l. 5 with Jensen, Fig. 4, item 17, Fig. 7, item 2, and col. 1, ll. 10-53 and Spec. Figs. 2 and 3 and p. 33). Jensen's electric heating causes plate 13 and the walls defining the orifices (diffusers) in the plate to function as a heating means for preforms passing through the orifices. (Jensen, col. 4, ll. 43-55). These heating walls defining the orifices are embraced by the claimed heating element. (Compare Jensen, col. 4, ll. 43-55 with Spec. 11).

Like Appellants, Jensen teaches that these heating orifices are positioned "in adjacent rows [and] are staggered with respect to one another. . . [to] minimiz[e] the pitch (18) between adjacent rows as well as the pitch (19) between adjacent tips [orifices] in the same row." (Compare Spec. 7 with Jensen col. 1, ll. 45-53 and col. 5, ll. 25-30). Jensen's arrangement of heating orifices (bushings) in the claimed configuration is said to allow increased glass fiber production. (Jensen, col. 1, ll. 45-52).

(Decision 8-9).

Appellants have provided no persuasive arguments or evidence disputing this determination.

Accordingly, Appellants' Request for Rehearing has been granted to the extent that we have reconsidered our Decision, but denied with respect to making any modification therein.

DENIED

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Application 10/770,617

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